

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN SENATE APRIL 29, 2009

SENATE BILL

No. 131

Introduced by ~~Senator Wiggins~~ *Senators Wiggins and Yee*

February 9, 2009

An act to ~~amend Section 25500.1 of~~ *add Section 25503.31 to the* Business and Professions Code, relating to alcoholic beverages, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Wiggins. Alcoholic beverages: tied-house restrictions: *symphony associations.*

The Alcoholic Beverage Control Act contains limitations on sales commonly known as “tied-house” restrictions, which generally prohibit a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any ~~off-sale~~ *on-sale* licensed premises. Existing law ~~provides that, for purposes of these provisions, the listing of the names, addresses, telephone numbers or e-mail addresses, or both, or Internet Web site addresses, of two or more unaffiliated on-sale retailers selling wine or brandy, or both, and operating and licensed as bona fide public eating places selling the wine or brandy produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, if specified conditions are met~~ *authorizes specific exceptions*

to this prohibition, including exceptions for donations and sales to nonprofit corporations.

This bill would ~~revise the direct inquiry provisions to include any electronic inquiries from consumers. This bill would also make technical, nonsubstantive changes to this provision~~ additionally authorize the monetary contributions and contributions of alcoholic beverages by alcoholic beverage licensees to a symphony association under specified circumstances, including that the symphony association has been incorporated in the City and County of San Francisco for no less than 30 years. This bill would make findings regarding the need for special legislation.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional requirements on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 25503.31 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *25503.31. Notwithstanding any other provision of this division,*
- 4 *a licensee that is licensed pursuant to this division may make*
- 5 *monetary contributions or alcoholic beverage contributions to a*
- 6 *symphony association, if the following conditions are met:*
- 7 *(a) The symphony association is a nonprofit charitable*
- 8 *corporation or association exempt from payment of income taxes*
- 9 *under the provisions of the Internal Revenue Code of the United*
- 10 *States and Chapter 4 (commencing with Section 23701) of Part*
- 11 *11 of Division 2 of the Revenue and Taxation Code.*

1 **(b)** *The symphony association has been incorporated in the City*
2 *and County of San Francisco for not less than 30 years and*
3 *produces not less than 175 musical events open to the general*
4 *public per symphony season.*

5 **(c)** *The symphony association holds a retail on-sale license in*
6 *a portion of its premises, provided that no such gift shall be used*
7 *in or for the benefit of the symphony association's retail on-sale*
8 *license.*

9 **(d)** *The symphony association does not make an agreement of*
10 *any kind with, offer any quid pro quo to, or participate in any*
11 *arrangement by which, the donor of the gift that provides the donor*
12 *or its wholesaler with preferential treatment in the choice and*
13 *purchase of alcoholic beverages by the symphony association for*
14 *use in its licensed premises.*

15 **SEC. 2.** *The Legislature finds and declares that, because of*
16 *the unique circumstances, and the cultural importance of the San*
17 *Francisco Symphony, a statute of general applicability cannot be*
18 *enacted within the meaning of subdivision (b) of Section 16 of*
19 *Article IV of the California Constitution, and, therefore, this special*
20 *statute is necessary.*

21 **SEC. 3.** *No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *the only costs that may be incurred by a local agency or school*
24 *district will be incurred because this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 **SEC. 4.** *This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety within*
32 *the meaning of Article IV of the Constitution and shall go into*
33 *immediate effect. The facts constituting the necessity are:*

34 *In order to allow the San Francisco Symphony to continue to*
35 *provide performing arts and to authorize the receipt of donations*
36 *to facilitate that provision, it is necessary that this act take effect*
37 *immediately.*

38 ~~**SECTION 1.** Section 25500.1 of the Business and Professions~~
39 ~~Code is amended to read:~~

1 ~~25500.1. (a) Notwithstanding Section 25500, the listing of the~~
2 ~~names, addresses, telephone numbers, e-mail addresses, or Internet~~
3 ~~Web site addresses, of two or more unaffiliated on-sale retailers~~
4 ~~selling wine, brandy, or both wine and brandy and operating and~~
5 ~~licensed as bona fide public eating places pursuant to Section~~
6 ~~23038 selling the wine, brandy, or both wine and brandy produced,~~
7 ~~distributed, imported, or both distributed and imported by a~~
8 ~~nonretail industry member in response to a direct inquiry from a~~
9 ~~consumer received by telephone, by mail, by electronic inquiry or~~
10 ~~in person does not constitute a thing of value or prohibited~~
11 ~~inducement to the listed on-sale retailer, provided:~~

12 ~~(1) The listing does not also contain the retail price of the~~
13 ~~product, and~~

14 ~~(2) The listing is the only reference to the on-sale retailers in~~
15 ~~the direct communication, and~~

16 ~~(3) The listing does not refer only to one on-sale retailer or only~~
17 ~~to on-sale retail establishments controlled directly or indirectly by~~
18 ~~the same on-sale retailer, and~~

19 ~~(4) The listing is made by, produced by, or paid for, or any~~
20 ~~combination thereof, exclusively by the nonretail industry member~~
21 ~~making the response.~~

22 ~~(b) For the purposes of this section, “nonretail industry member”~~
23 ~~is defined as a manufacturer, winegrower, distiller of wine, brandy,~~
24 ~~or both, regardless of any other licenses held directly or indirectly~~
25 ~~by such person. Except as specifically provided above, any~~
26 ~~payment for, making or production, either directly or indirectly,~~
27 ~~listing the names, addresses, telephone numbers, e-mail addresses,~~
28 ~~or Internet Web site addresses, of on-sale retailers otherwise~~
29 ~~authorized by this section by a wholesaler or by a wholesaler that~~
30 ~~also holds an importer’s license shall constitute the furnishing of~~
31 ~~a thing of value or inducement to the listed on-sale retailers in~~
32 ~~violation of this division.~~